

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0396-AIR-E TCEQ ID: RN105377717 CASE NO.: 35524
RESPONDENT NAME: KM Aviation, Inc.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: K M Aviation, 5501 Airport Drive, Building 110, Denison, Grayson County</p> <p>TYPE OF OPERATION: Aircraft stripping and repainting facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 11, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Sidney Wheeler, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-4969; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Kevin Miller, Owner, KM Aviation, Inc., 5300 Airport Drive, Denison, Texas 75020 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 27, 2007</p> <p>Date of NOV/NOE Relating to this Case: February 26, 2008 (NOE)</p> <p>Background Facts: This was an enforcement follow-up investigation.</p> <p>AIR</p> <p>Failure to obtain an air permit or satisfy the conditions of a permit by rule. Specifically, the Respondent constructed and operated a surface coating facility without authorization [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p>Total Assessed: \$2,000</p> <p>Total Deferred: \$400 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,600</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application or demonstrate that the Plant can satisfy the conditions for a permit by rule;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification that authorization to construct and operate a source of air emissions has been obtained, the conditions for a permit by rule have been satisfied, or that construction/operation has ceased until such time that appropriate authorization is obtained; and</p> <p>d. Submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and c.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	3-Mar-2008	Screening	7-Mar-2008	EPA Due	
	PCW	11-Mar-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	KM Aviation, Inc.		
Reg. Ent. Ref. No.	RN105377717		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35524	No. of Violations	1
Docket No.	2008-0396-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Sidney Wheeler
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum	\$0	Maximum
		\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$2,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 **\$0**

Notes No change due to average performer classification.

Culpability No 0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$39 **0% Enhancement*** Subtotal 6 **\$0**
Approx. Cost of Compliance \$1,000 ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 Final Subtotal **\$2,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$2,000**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$2,000**

DEFERRAL 20% Reduction Adjustment **-\$400**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$1,600**

Screening Date 7-Mar-2008

Docket No. 2008-0396-AIR-E

PCW

Respondent KM Aviation, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35524

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105377717

Media [Statute] Air

Enf. Coordinator Sidney Wheeler

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 7-Mar-2008 Respondent KM Aviation, Inc. Case ID No. 35524 Reg. Ent. Reference No. RN105377717 Media [Statute] Air Enf. Coordinator Sidney Wheeler Violation Number <input type="text" value="1"/>	Docket No. 2008-0396-AIR-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;"> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision February 29, 2008</i> </div>																				
Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)																					
Violation Description Failed to obtain an air permit or satisfy the conditions of a permit by rule. Specifically, the Respondent constructed and operated a surface coating facility without authorization, as documented during an investigation conducted on November 27, 2007.																					
Base Penalty <input style="width: 100px;" type="text" value="\$10,000"/>																					
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">Harm</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="0%"/> </div>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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>> Programmatic Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">Falsification</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="10%"/> </div>		Falsification				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>																		
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																		
Matrix Notes	<div style="border: 1px solid black; padding: 10px; min-height: 40px;"> 100% of the rule was not met. </div>																				
Adjustment <input style="width: 100px;" type="text" value="\$9,000"/>																					
<input style="width: 100px;" type="text" value="\$1,000"/>																					
Violation Events																					
<div style="display: flex; justify-content: space-between;"> <div> Number of Violation Events <input style="width: 50px;" type="text" value="2"/> </div> <div> <input style="width: 50px;" type="text" value="101"/> Number of violation days </div> </div> <div style="margin-top: 10px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">daily</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td style="text-align: center;">mark only one with an x</td> <td style="text-align: center;">monthly</td> <td style="text-align: center;">quarterly</td> <td style="text-align: center;">semiannual</td> <td style="text-align: center;">annual</td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input checked="" type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">single event</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> </div> <div style="text-align: right; margin-top: 10px;"> Violation Base Penalty <input style="width: 100px;" type="text" value="\$2,000"/> </div> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> Two quarterly events are recommended from the investigation date (November 27, 2007) to the enforcement screening date (March 7, 2008). </div>			daily				mark only one with an x	monthly	quarterly	semiannual	annual		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>		single event	<input type="text"/>	<input type="text"/>	<input type="text"/>
	daily																				
mark only one with an x	monthly	quarterly	semiannual	annual																	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>																	
	single event	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
Economic Benefit (EB) for this violation																					
<div style="display: flex; justify-content: space-between;"> <div> Estimated EB Amount <input style="width: 100px;" type="text" value="\$39"/> </div> <div> Statutory Limit Test </div> </div>																					
Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$2,000"/>																					
This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$2,000"/>																					

Economic Benefit Worksheet

Respondent KM Aviation, Inc.
Case ID No. 35524
Reg. Ent. Reference No. RN105377717
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$1,000	27-Nov-2007	7-Sep-2008	0.8	\$39	n/a	\$39
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to prepare and submit Form PI-7 to obtain a permit by rule. Date required is the date of the investigation and the final date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$39

Compliance History

Customer/Respondent/Owner-Operator:	CN602688806	KM Aviation, Inc.	Classification: AVERAGE	Rating: 29.67
Regulated Entity:	RN105377717	K M AVIATION	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	5501 AIRPORT DR BLDG 110, DENISON, TX, 75020		Rating Date: September 01 07 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	March 06, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 06, 2003 to March 06, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Sidney Wheeler Phone: (512) 239-4969

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | | |
|------------------------|--|--|
| A. | Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government. | |
| | N/A | |
| B. | Any criminal convictions of the state of Texas and the federal government. | |
| | N/A | |
| C. | Chronic excessive emissions events. | |
| | N/A | |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) | |
| | 1 02/26/2008 (614309) | |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) | |
| F. | Environmental audits. | |
| | N/A | |
| G. | Type of environmental management systems (EMSs). | |
| | N/A | |
| H. | Voluntary on-site compliance assessment dates. | |
| | N/A | |
| I. | Participation in a voluntary pollution reduction program. | |
| | N/A | |
| J. | Early compliance. | |
| | N/A | |
| Sites Outside of Texas | | |
| | N/A | |

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KM AVIATION, INC.
RN105377717

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-0396-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding KM Aviation, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an aircraft stripping and repainting facility at 5501 Airport Drive, Building 110 in Denison, Grayson County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 2, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Dollars (\$2,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Six Hundred Dollars (\$1,600) of the administrative penalty and Four

Hundred Dollars (\$400) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to obtain an air permit or satisfy the conditions of a permit by rule, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on November 27, 2007. Specifically, the Respondent constructed and operated a surface coating facility without authorization.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: KM Aviation, Inc., Docket No. 2008-0396-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application or demonstrate that the Plant can satisfy the conditions for a permit by rule in accordance with 30 TEX. ADMIN. CODE § 116.110(a) to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
- c. Within 180 days after the effective date of this Agreed Order, submit written certification that authorization to construct and operate a source of air emissions has been obtained, the conditions for a permit by rule have been satisfied, or that construction/operation has ceased until such time that appropriate authorization is obtained; and
- d. Submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

7/23/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Kevin Miller
Signature

5-29-08
Date

KEVIN MILLER
Name (Printed or typed)
Authorized Representative of
KM Aviation, Inc.

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

THEORY OF THE EARTH

1. The Earth is a sphere of approximately 12,756 km in diameter.

2. The Earth is composed of several layers: the crust, the mantle, and the core.

3. The crust is the outermost layer of the Earth, ranging from 5 to 70 km in thickness. It is composed of solid rock and is divided into continental and oceanic crust.

4. The mantle is the layer below the crust, ranging from 70 to 2,900 km in thickness. It is composed of solid rock and is divided into the upper mantle and the lower mantle. The upper mantle is further divided into the asthenosphere and the lithosphere. The lithosphere is the rigid upper part of the upper mantle, and the asthenosphere is the hotter, more plastic part of the upper mantle. The lower mantle is the part of the mantle below the asthenosphere, and it is composed of solid rock.

5. The core is the innermost layer of the Earth, ranging from 2,900 to 6,371 km in radius. It is composed of molten metal and is divided into the outer core and the inner core. The outer core is the part of the core that is molten, and it ranges from 2,900 to 5,150 km in radius. The inner core is the part of the core that is solid, and it ranges from 5,150 to 6,371 km in radius. The inner core is composed of solid metal, and it is the hottest part of the Earth, with temperatures reaching up to 5,400 K.

6. The Earth's magnetic field is generated by the movement of molten metal in the outer core.